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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,765	08/06/2003	Maurus Logan	Medcount-104	1708
7590	06/10/2004		EXAMINER	
James J. Daley c/o Medcount Systems, L.L.C. 30 Hillside Road Elizabeth, NJ 07208			BRITTAINE, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
	LOGAN, MAURUS	
Examiner	Art Unit	
James R. Brittain	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
 - 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to a cable tie, classified in class 24, subclass 16PB.
- II. Claims 6-10, drawn to a method for securing a cable tie to a mounting plate, classified in class 248, subclass 74.3.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a materially different process of using that product such as inserting an extending appendage comprising a portion of the cable tie into a single aperture in the mounting plate and then securing the cables.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. James J. Daley on April 27, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56..

The declaration qualifies compliance by only reciting section 37 CFR 1.56(a) in the declaration. However, 37 CFR 1.63 doesn't qualify compliance to only 37 CFR 1.56(a), but requires recitation of compliance with 37 CFR 1.56.

Claim Objections

Claim 1 is objected to because of the following informalities: The passage "to strap free end" (lines 1-2) lacks the appropriate article --a--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by JP 6-185505.

JP 6-185505 (figures 1-5, 7) teaches cable tie structure for securing a cable 4 to a plate 7, the cable tie including a strap extending to strap free end, said strap having innate connection compatibility through the connection structure 12, 16, 15, 17 in the first species shown figures 1-3 and through the connection structure 18, 19, 20 in the second species shown in figures 4 and 5 to a mounting plate having clearance with a parent structure precluding access to an underside of said mounting plate. The claim construction requires the strap as only “having innate connection compatibility to a mounting plate having clearance with a parent structure precluding access to an underside of said mounting plate”. The “mounting plate” and “parent structure” are therefore not elements claimed in combination but are statements of the intended environment of the cable tie. The cable tie of JP 6-185505 is inherently usable in the environment of the plate 7 precluding access to the underside of the plate.

As to claims 2 and 3, note the arcuateness exhibited by the curved elbow 16 in figures 2 and 4. The curved elbow is considered to be formed at the strap free end.

In regard to claim 4, the undulation is considered to include a course 17 that extends in spaced perpendicular relationship to the strap section 12 as shown in figure 3.

Claims 1-3 and 5 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Adams et al. (US 6681451).

Adams et al. (figure 1) teaches a cable tie 1 including a strap extending to strap free end, said strap having innate connection compatibility because of its folded U-shaped configuration to a mounting plate having clearance with a parent structure precluding access to an underside of said mounting plate because of its ability to be threaded through adjacent apertures. The claim construction requires the strap as only “having innate connection compatibility to a mounting plate having clearance with a parent structure precluding access to an underside of said mounting plate”. The “mounting plate” and “parent structure” are therefore not elements claimed in combination but are statements of the intended environment of the cable tie. The cable tie of Adams et al. is inherently usable in the environment of a mounting plate with two apertures wherein access to the underside of the mounting plate is precluded.

As to claim 2, 3, and 5, the U-shaped folded section is considered to be at the strap free end and clearly defines a course that extends parallel to the strap.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moody et al. (US 3667710).

Moody et al. (figures 1-4) teaches a cable tie 10 including a strap extending to a strap free end, the strap having innate connection compatibility via the extending appendage 13 comprising a portion of the cable tie strap to an aperture 34 in a mounting plate 35 having clearance with a parent structure precluding access to an underside of the mounting plate.

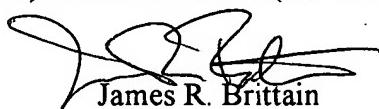
Conclusion

The patents of Thompson (US 2003/0167602, figure 1), Felix (US 1710157, figures 1, 2), O'Grady (US 5314154, figures 6-12), Daoud et al. (US 6231014, figure 3), Anderson (US 5752682, figure 6), Peters et al. (figure 1), Kurosaki (US 4061299, figure 2), Moody et al. (US 3667710, figures 2-8), JP 2003-106311 (figures 1-6), and GB 21032274 (figures 9) teaches pertinent tie structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB